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## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD**

LSA Document #05-322(WPCB)

## **DEVELOPMENT OF AMENDMENTS TO RULES AT 327 IAC 5-4-3, 327 IAC 15-15-11, AND 327 IAC 15-15-12 CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to concentrated animal feeding operations at 327 IAC 5-4-3, 327 IAC 15-15-11, and 327 IAC 15-15-12. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 327 IAC 5-4-3; 327 IAC 15-15-11; 327 IAC 15-15-12.

**AUTHORITY:** IC 13-13-5-1; IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3.

### **STATUTORY REQUIREMENTS**

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

### **BACKGROUND**

Under the Clean Water Act, concentrated animal feeding operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in the federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. On February 28, 2005, the Federal Circuit Court of Appeals, Second Circuit, in *Waterkeeper Alliance, et al v. EPA*, vacated the requirement to apply for a permit. The United States Environmental Protection Agency (EPA) was ordered by the court to amend the federal regulation based on the court's decision. On October 31, 2005, EPA published a notice in the Federal Register (70 FR 62275) proposing to extend certain deadlines contained in the federal regulation while rule revisions required by the court are developed. The notice states that EPA will propose and finalize the extensions of time prior to February 13, 2006. In order for the Indiana rules to be consistent with EPA's stated intention to extend deadlines and amend the federal regulations, Indiana is delaying the dates for some CAFOs to submit information to become covered under the Indiana NPDES program. The dates in the Indiana rules are being delayed for three (3) years to allow time for the EPA regulation to become effective and for Indiana to adopt consistent rules that are at least as stringent as the federal regulations.

#### **IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law**

The following information is required for each NIFL element:

- (1) The environmental circumstance or hazard dictating the imposition of the NIFL element in order to protect human health and

the environment in Indiana; and examples in which federal law is inadequate to provide this protection for Indiana.

(2) The estimated fiscal impact and expected benefits of the NIFL element, based on the extent to which the NIFL element exceeds the requirements of federal law.

(3) The availability for public inspection of all materials relied on by IDEM in the development of the NIFL element including, if applicable: health criteria, analytical methods, treatment technology, economic impact data, environmental assessment data, analyses of methods to effectively implement the proposed rule, and other background data.

NIFL Element (A) Each specified date (see draft rule) is being delayed for three (3) years.

(1) In order for the Indiana rules to be consistent with the federal regulations, the Indiana dates are being delayed for three (3) years. Indiana's NPDES program is required to be at least as stringent as the federal regulations and Indiana was required by the United States District Court for the Southern District of Indiana, to adopt requirements for CAFOs.

(2) There is no fiscal impact by delaying the coverage and submittal dates in the Indiana rule.

(3) The decision of the Federal Circuit Court of Appeals, Second Circuit, *Waterkeeper Alliance, et al v. EPA*, which required EPA to amend the federal regulations for facilities with certain number of animals.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at [www.in.gov/idem/ctap](http://www.in.gov/idem/ctap).

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 N. Senate Avenue

W-041

Indianapolis, IN 46204-2251

(317) 232-8578

[selyusuf@idem.in.gov](mailto:selyusuf@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC50-01

100 N. Senate Avenue

IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

[elevenha@idem.in.gov](mailto:elevenha@idem.in.gov)

### **FINDINGS**

The commissioner of IDEM has prepared written findings regarding the rulemaking concerning concentrated animal feeding operations. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) The United States Court of Appeals for the Second Circuit's decision in *Waterkeeper Alliance, Inc., et al v. United States Environmental Protection Agency* will affect the Indiana CAFO rules. In a Federal Register Notice of Availability of Correspondence published October 31, 2005, (70 FR 62275) EPA stated,

"EPA received inquiries on the permit application date in the CAFO regulation and whether, in response to the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper v. EPA*, 399 F. 3d 486 (2<sup>nd</sup> Cir. 2005), the permit application date may be extended." "...the '2003 CAFO rule', contains the requirement that by February 13, 2006, all newly defined CAFOs must apply for a National Pollutant Discharge Elimination System (NPDES) permit. The 2003 CAFO rule also requires that all CAFOs develop and implement a Nutrient Management Plan by December 31, 2006. EPA is in the process of developing options for revising the 2003 CAFO rule to comply with the Second Circuit Court of Appeals' decision. The schedule for final action provides for a full and ample opportunity for public notice and comment, but it is not consistent with completion by February 13, 2006."

As is the case with Indiana rulemaking, any options developed by EPA, cannot be changed by rule before the deadlines in the Indiana CAFO rules. Therefore, the Indiana dates must be delayed by three years to allow for the EPA to develop amendments to the federal regulations in compliance with the Second Circuit decision and for Indiana to adopt the changes into the Indiana rules

to be consistent with the federal regulations.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly

Commissioner

Indiana Department of Environmental Management

## REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#05-322(WPCB)[CAFO Rule Compliance Dates]

Marjorie Samuel

Rules, Planning, and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

100 N. Senate Avenue

Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the Eleventh Floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning, and Outreach Section at (317) 232-7995.

## COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed or hand delivered by December 30, 2005.

Additional information regarding this action may be obtained from Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. 327 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

### 327 IAC 5-4-3 Concentrated animal feeding operations

**Authority:** IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

**Affected:** IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations or CAFOs are point sources that require NPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all:

(1) animals in confinement at the operation; and ~~and~~

(2) manure, litter, and process wastewater generated by those animals or the production of those animals; regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.

(b) The following definitions apply throughout this rule:

(1) "Agricultural storm water discharge" means a precipitation-related discharge from a land application area where the manure, litter, or process wastewater has been applied in accordance with:

(A) this rule; and

(B) site-specific nutrient management practices;

to ensure the agronomic utilization of the nutrients in the manure, litter, or process wastewater.

(2) "Animal confinement area" means the areas of the operation where animals are housed. ~~It~~ **The term** includes, but is not limited to, the following areas:

(A) Open lots.

- (B) Housed lots.
- (C) Feedlots.
- (D) Confinement houses.
- (E) Stall barns.
- (F) Free stall barns.
- (G) Milk rooms.
- (H) Milking center.
- (I) Cowyards.
- (J) Barnyards.
- (K) Medication pens.
- (L) Walkers.
- (M) Animal walkways.
- (N) Stables.

(3) "Animal feeding operation" or "AFO" means a lot or facility, other than an aquatic animal production facility, where both ~~these~~ **of the following** conditions are met:

- (A) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of **at least** forty-five (45) days ~~or more~~ in any twelve (12) month period. ~~and~~
- (B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

**(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.**

~~(4)~~ **(5) "Concentrated animal feeding operation" or "CAFO" means an AFO that is one (1) of the following:**

- (A) A large CAFO.
- (B) A medium CAFO.
- (C) Designated as a CAFO by the commissioner under subsection (c).

Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if the AFOs adjoin each other or if the AFOs use a common area or system for land application of manure, litter, or process wastewater.

~~(5) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.~~

(6) "Land application area" means land under the control of an AFO owner or operator, whether the land is:

- (A)** owned;
- (B)** rented;
- (C)** leased; or
- (D)** subject to an access agreement;

to which manure, litter, or process wastewater from the production area is or may be applied.

(7) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines **at least** as many as ~~or more than~~ the number of animals specified in any of the following categories:

- (A) Seven hundred (700) mature dairy cows, whether milked or dry.
- (B) One thousand (1,000) veal calves.
- (C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, **the following:**
  - (i)** Heifers.
  - (ii)** Steers.
  - (iii)** Bulls. ~~and~~
  - (iv)** Cow/calf pairs.

(D) Two thousand five hundred (2,500) swine each weighing **at least** fifty-five (55) pounds. ~~or more.~~

(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.

(F) Five hundred (500) horses.

(G) Ten thousand (10,000) sheep or lambs.

(H) Fifty-five thousand (55,000) turkeys.

**(I) If the AFO uses a liquid manure handling system, either of the following:**

- ~~(H)~~ **(i)** Thirty thousand (30,000) laying hens or broilers. ~~if the AFO uses a liquid manure handling system.~~
- (ii) Five thousand (5,000) ducks.**

**(J) If the AFO uses other than a liquid manure handling system, any of the following:**

- ~~(H)~~ **(i)** One hundred twenty-five thousand (125,000) chickens, other than laying hens. ~~if the AFO uses other than a liquid manure handling system.~~
- ~~(K)~~ **(ii)** Eighty-two thousand (82,000) laying hens. ~~if the AFO uses other than a liquid manure handling system.~~

- ~~(F)~~ **(iii)** Thirty thousand (30,000) ducks. ~~if the AFO uses other than a liquid manure handling system.~~
- ~~(M)~~ Five thousand (5,000) ducks; ~~if the AFO uses a liquid manure handling system.~~
- (8) “Manure” means **the following**:
- (A)** Animal feces or urine, or both. ~~and~~
  - (B)** Materials, such as:
    - (i)** bedding;
    - (ii)** compost;
    - (iii)** raw materials; or
    - (iv)** other materials;
 commingled with animal feces or urine, or both. ~~feces and urine.~~
- (9) “Manure storage area” means any area where manure is kept. ~~It~~ **The term** includes, but is not limited to, the following areas:
- (A) Lagoons.
  - (B) Run-off ponds.
  - (C) Storage sheds.
  - (D) Stockpiles.
  - (E) Under house or pit storage.
  - (F) Liquid impoundments.
  - (G) Static piles.
  - (H) Composting piles.
- (10) “Medium concentrated animal feeding operation” or “medium CAFO” means **the following**:
- (A) An AFO, where the type and number of animals that are stabled or confined at the operation falls within the following ranges:
    - (i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry.
    - (ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.
    - (iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, **the following**:
      - (AA)** Heifers.
      - (BB)** Steers.
      - (CC)** Bulls. ~~and~~
      - (DD)** Cow/calf pairs.
    - (iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing **at least** fifty-five (55) pounds. ~~or more.~~
    - (v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.
    - (vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.
    - (vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.
    - (viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.
    - (ix) If the AFO uses a liquid manure handling system, either of the following:**
      - ~~(ix)~~ **(AA)** Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers. ~~if the AFO uses a liquid manure handling system.~~
      - (BB) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks.**
    - (x) If the AFO uses other than a liquid manure handling system, any of the following:**
      - ~~(x)~~ **(AA)** Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens. ~~if the AFO uses other than a liquid manure handling system.~~
      - ~~(xi)~~ **(BB)** Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens. ~~if the AFO uses other than a liquid manure handling system.~~
      - ~~(xii)~~ **(CC)** Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks. ~~if the AFO uses other than a liquid manure handling system.~~
      - ~~(xiii)~~ **One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks; if the AFO uses a liquid manure handling system. and**
  - ~~(B)~~ One ~~(1)~~ of these conditions are met:
  - (B)** Pollutants are discharged in **one (1) of the following ways**:
    - (i)** Into waters of the state through a:
      - (AA)** manmade ditch;
      - (BB)** flushing system; or ~~other~~

(CC) similar manmade device. ~~or~~

(ii) ~~Pollutants are discharged~~ Directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) “No potential to discharge” means, for purposes of section 3.1 of this rule, that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) “Process wastewater” means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.

(ii) Washing, cleaning, or flushing **any of the following:**

(AA) Pens.

(BB) Barns.

(CC) Manure pits. ~~or~~

(DD) Other AFO facilities.

(iii) Direct contact swimming, washing, or spray cooling of animals.

(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including **the following:**

(i) Manure.

(ii) Litter.

(iii) Feed.

(iv) Milk.

(v) Eggs. ~~or~~

(vi) Bedding.

(13) “Production area” means that part of an AFO that includes the following:

(A) The animal confinement areas.

(B) The manure storage areas.

(C) The raw materials storage areas.

(D) The waste containment areas.

(E) ~~An~~ egg washing or processing facility.

(F) ~~A~~ milking parlor.

(G) Any area used in the:

(i) storage;

(ii) handling;

(iii) treatment; or

(iv) disposal;

of mortalities.

(14) “Raw materials storage area” includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials storage sheds.

(D) Feed bins.

(E) Feedstuffs storage bunkers and sheds.

(15) “Small concentrated animal feeding operation” or “small CAFO” means an AFO that is:

(A) designated as a CAFO; and ~~is~~

(B) not a medium CAFO or large CAFO.

(16) “Waste containment area” means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of an AFO as a CAFO shall occur as follows:

(1) Notwithstanding any other provision of this section, any AFO may be designated as a CAFO where it is determined to be a significant contributor of pollutants to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the AFO and the amount of wastes reaching waters of the state.

(B) The location of the AFO relative to waters of the state.

(C) The means of conveyance of manure, litter, and process wastewaters into waters of the state.

(D) The:

(i) slope;

(ii) vegetation;

(iii) rainfall; and

(iv) other factors;

affecting the likelihood or frequency of discharge of manure, litter, and process wastewater into waters of the state.

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall an AFO be designated as a CAFO under this subsection until there has been:

(A) an on-site inspection of the operation; and

(B) a determination that the operation should be regulated under the permit program.

(3) No AFO with ~~less~~ fewer than the numbers of animals set forth in subsection (b)(10) shall be designated as a CAFO unless **pollutants are discharged in one (1) of the following ways:**

(A) ~~pollutants are discharged~~ Into waters of the state through a:

(i) manmade ditch;

(ii) flushing system; or ~~other~~

(iii) similar manmade device. ~~or~~

(B) ~~pollutants are discharged~~ Directly into waters of the state that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with ~~327 IAC 5-4-3.1~~ **section 3.1 of this rule.**

(e) In addition to the requirements of 327 IAC 5-2-3, the owners or operators of new and existing CAFOs applying for an individual NPDES permit shall provide to the department the following:

(1) The following information on forms provided by the department:

(A) **The** name, telephone number, and mailing address of the owner and operator.

(B) **The** name, location, and address of the operation **and the** contact person and telephone number.

(C) **The** type and number of animals at the operation.

(D) **The** type of containment and storage and total capacity for manure, litter, and process wastewater storage (ton/gallons).

(E) **The** total number of acres under control of the applicant available for land application.

(F) **The** estimated amount of manure, litter, and process wastewater **as follows:**

(i) Generated per year (tons/gallons).

~~(G) Estimated amount of manure, litter, and process wastewater~~ (ii) Transferred to other persons per year (tons/gallons).

~~(H) (G)~~ **A** list of other environmental permits held and permit numbers including, if applicable, the CFO farm ID number provided on state CFO approval under 327 IAC 16.

~~(H)~~ **(H)** A soil survey map of the geographic area in which the CAFO is located showing the location of **the following:**

(i) The production area facility. ~~and~~

(ii) Land application areas.

~~(I)~~ **(I)** **The** SIC code for the operation.

~~(J)~~ **(J)** **The** name of **the** waterbody receiving drainage from the production area.

~~(K)~~ **(K)** **The** telephone number and title of **the** person signing the application.

(2) Payment of the application fee of fifty dollars (\$50).

(f) The department shall process the application in accordance with the procedures specified in 327 IAC 5-3. The permit will require the applicant to comply with nutrient management and water quality standards under 327 IAC 15-15 and 327 IAC 16.

(g) The discharge of manure, litter, or process wastewater from a CAFO to waters of the state as a result of land application of manure, litter, or process wastewater by the CAFO to land application areas under the control of the CAFO owner or operator is a discharge subject to NPDES permit requirements under this rule or 327 IAC 15-15, except where it is an agricultural storm water discharge.

(h) Not later than one hundred eighty (180) days before the expiration of the permit, the permittee shall submit an application to

renew the permit on forms provided by the department. The permittee need not reapply for a permit if the facility has:

- (1) ceased operation and has demonstrated to the commissioner that there is no remaining potential to discharge; or
- (2) reduced the number of animals such that the facility is no longer defined as a CAFO.

(i) The deadlines to either seek coverage under an individual NPDES permit ~~pursuant to~~ **under** this rule or under a general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15 are as follows:

(1) Operations defined as CAFOs ~~prior to~~ **before** April 14, 2003, must **do the following**:

(A) Seek coverage as of April 14, 2003. ~~and~~

(B) Comply with all applicable requirements at the time of coverage.

(2) The following operations, which were defined as CAFOs as of April 14, 2003, but were not defined as CAFOs ~~prior to~~ **before** that date, must seek coverage ~~no not later than~~ **February 13, 2006; 2009**:

(A) CAFOs with **at least** one thousand (1,000) ~~or more~~ heifers.

(B) CAFOs with **at least** ten thousand (10,000) ~~or more~~ swine weighing less than fifty-five (55) pounds.

(C) CAFOs with **at least**:

(i) one hundred twenty-five thousand (125,000) ~~or more~~ chickens, other than laying hens; ~~if the CAFO uses other than a liquid manure handling system; or~~

~~(D) CAFOs with~~ (ii) eighty-two thousand (82,000) ~~or more~~ laying hens;

if the CAFO uses other than a liquid manure handling system.

(3) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs ~~prior to~~ **before** April 14, 2003, because the operation has not discharged except in the event of a twenty-five (25) year, twenty-four (24) hour rainfall event must **do the following**:

(A) Maintain a CFO approval under 327 IAC 16 until:

(i) an individual NPDES permit is obtained; or

(ii) the operation receives general permit coverage under 327 IAC 15-15.

(B) Certify **the following** to the commissioner in writing within ninety (90) days of the effective date of this rule: ~~that:~~

(i) The AFO was not required to apply for a permit under ~~327 IAC 5~~; **this article**.

(ii) A discharge has not occurred from the AFO. ~~and~~

(iii) The operation was constructed and is at all ~~time~~ **times** maintained to prevent a discharge during dry weather and wet weather up to and including a twenty-five (25) ~~year~~, twenty-four (24) hour rainfall event.

(C) Sign the certification in accordance with 327 IAC 15-15-5(c).

(D) Seek permit coverage under an individual permit ~~pursuant to~~ **under** this rule or ~~under~~ a general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15 by April 13, ~~2006~~; **and 2009**.

(E) Not discharge manure, litter, or process wastewater to the waters of the state. If an AFO has a discharge after submitting a certification to the commissioner, the AFO must **do the following**:

(i) Notify the department of the discharge within twenty-four (24) hours of the discharge. ~~and~~

(ii) Seek coverage within thirty (30) days of the discharge under **either of the following**:

(AA) An individual NPDES permit ~~pursuant to~~ **the under this rule**. ~~or~~

(BB) A general NPDES permit ~~pursuant to~~ **under** 327 IAC 15-15.

(4) Any operation that has a discharge after submitting the certification under this subsection to the commissioner shall **do the following**:

(A) Immediately notify the department of the discharge. ~~and~~

(B) Seek coverage within thirty (30) days of the discharge under **either of the following**:

(i) An individual NPDES permit under this rule. ~~or~~

(ii) The NPDES general permit rule under 327 IAC 15-15.

(5) For operations that are newly constructed or that make changes, such that the operation becomes a CAFO as defined under this rule, after April 14, 2003, but are not new sources as defined by 327 IAC 15-15-3(4), **one (1) of the following**:

(A) For newly constructed operations not subject to effluent limitations guidelines in 40 CFR 412, effective April 14, 2003, one hundred eighty (180) days ~~prior to~~ **before the** commencement of operations. ~~or~~

(B) For other operations, ~~no not~~ later than ninety (90) days after becoming a CAFO as defined under this rule.

However, if an operational change that makes the operation a CAFO would not have made the operation CAFO ~~prior to~~ **before** April 14, 2003, the operation has until April 13, ~~2006~~; **2009**, or ninety (90) days from becoming defined as a CAFO, whichever is later, to seek coverage.

(6) New sources, as defined by 327 IAC 15-15-3(4), must seek permit coverage at least one hundred eighty (180) days ~~prior to~~ **the time before** the CAFO is expected to commence operation. A new CAFO may commence operation at the time that the facility obtains an NPDES permit.



(7) Operations designated as a CAFO must seek permit coverage within ninety (90) days of being designated.

(j) A CAFO that obtains:

(1) an individual NPDES permit under this section; or ~~obtains~~

(2) a general permit under 327 IAC 15-15;

is not required to obtain or renew the CFO approval under 327 IAC 16-7.

(k) Permits for CAFOs shall include conditions based on the requirements in 327 IAC 5-2-8, ~~5-2-10~~, **327 IAC 5-2-10**, and ~~5-2-12~~. **327 IAC 5-2-12.** (*Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2225*)

SECTION 2. 327 IAC 15-15-11 IS AMENDED TO READ AS FOLLOWS:

### **327 IAC 15-15-11 Soil conservation practice plan**

**Authority:** IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

**Affected:** IC 13-18-10

Sec. 11. (a) Except as provided in subsection (b), any person with a facility subject to this rule must develop and implement a soil conservation practice plan for land application areas by December 31, ~~2006~~, **2009**. The following milestones shall be met for the development and implementation of the plan **by the owner or operator of the CAFO who:**

(1) ~~The owner or operator of the CAFO~~ Must identify the person who will develop the soil conservation practice plan by December 31, 2004.

(2) ~~The owner or operator of the CAFO~~ Must have completed the soil conservation practice plan by December 31, ~~2005~~, **2008**.

(3) ~~The owner or operator of the CAFO~~ Must have implemented the soil conservation practice plan by December 31, ~~2006~~, **2009**.

(4) ~~The owner or operator of the CAFO~~ Shall report progress toward meeting each milestone in this section in the annual report required under section 9(b) of this rule.

(b) For CAFOs that become subject to this rule after December 31, ~~2006~~, **2009**, the requirement to develop and implement a soil conservation practice plan shall apply as of the date permit coverage commences. If a person is proposing to apply manure, litter, or process wastewater to snow-covered or frozen ground or to highly erodible land, a soil conservation practice plan must be developed and implemented in accordance with section 14 of this rule before ~~such~~ the application. Any land subject to a land use agreement:

(1) not owned or controlled by the CAFO owner or operator to which manure, litter, or process wastewater is applied; and

(2) where the landowner does not implement conservation practices, as applicable under this rule;

must be used in accordance with sections 10 ~~and 12~~ **and through** 14 of this rule.

(c) All new sources, as defined in section 3 of this rule, must comply with this section upon the date of permit coverage under this rule.

(d) The soil conservation practice plan must:

(1) be developed in accordance with NRCS conservation practice standards; and ~~must~~

(2) specify, for each field receiving manure, litter, or process wastewater for land application, how to:

(1) ~~(A)~~ **(A)** reduce soil erosion to a tolerable loss (T); and

(2) ~~(B)~~ **(B)** minimize nutrient loss through leaching and run-off.

(e) The soil conservation practice plan must contain the following:

(1) A soil map clearly showing the specific fields subject to the conservation practices.

(2) A description of the soil types present.

(3) ~~The~~ slope of land application sites.

(4) Identification of appropriate:

(A) site-specific conservation practices to reduce soil erosion and control run-off of pollutants; ~~and~~

(5) ~~Identification of appropriate~~ **(B)** methods to minimize nutrient leaching.

(6) ~~(5)~~ **(5)** If applicable, the following:

(A) A plan for application of manure, litter, or process wastewater to frozen or snow-covered ground, as required under section 14 of this rule.

~~(7) If applicable;~~ **(B) Identification of the following:**

**(i)** Land application sites for frozen or snow-covered ground application.

~~(8) If applicable; identification of~~ **(ii)** Highly erodible land, as required under **section 12(i)** of this rule.

(f) The soil conservation practice plan shall be kept with the operating record required under section 17 of this rule. (*Water Pollution Control Board; 327 IAC 15-15-11; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2238*)

SECTION 3. 327 IAC 15-15-12 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 15-15-12 Nutrient management requirements**

**Authority:** IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

**Affected:** IC 13-18-10

Sec. 12. (a) CAFOs that are not new sources must conduct manure, litter, and process wastewater testing for nitrogen and phosphorus annually. Soil sampling and testing must be conducted at a minimum ~~of~~ once every three (3) years. Owners or operators may use the most recent data required under 327 IAC 16-7-11 to meet this requirement after the effective date of this rule.

(b) CAFOs that are new sources must, as of the date of permit coverage, conduct manure, litter, and process wastewater testing for nitrogen and phosphorus ~~prior to~~ **before** the first land application and annually thereafter. All CAFOs, except for new sources, shall conduct soil testing for phosphorus:

**(1)** as of the date of permit coverage; and

**(2)** once every three (3) years thereafter.

(c) Owners or operators shall use the protocols listed in the NRCS 590 standard for sampling and testing of soil, manure, litter, and process wastewater.

(d) CAFOs that are not new sources must adjust land application rates to conform with the NRCS 590 standard by December 31, ~~2006~~. **2009**.

(e) CAFOs that are new sources must, as of the date of permit coverage, be prepared to conform with land application rates based on the NRCS 590 standard for the first and all subsequent land application activities.

(f) Except as otherwise provided under this section, application of manure, litter, and process wastewater must be in accordance with the setbacks in Table 1:

Table 1.

SETBACK DISTANCES FROM DOWNGRAIDENT SURFACE FEATURES (in feet)

Known Feature	Less than or Equal to 6% Slope; or Residue Cover	Greater than 6% Slope
Public water supply wells and public water supply surface intake structures	500	500
Surface waters of the state	100	200
Sinkholes (measured from the surface opening or the lowest point)	100	200
Wells	100	200
Drainage inlets	100	200
Property lines and public roads	50	50

(1) All setback distances must be measured from the edge of the area of actual placement of manure, litter, or process wastewater on the land.

(2) The property line setback distances specified in Table 1 may be waived in writing by the owner of the adjoining property.

(3) **The setback is the width of the filter strip** if a properly designed and maintained filter strip of at least thirty-five (35) feet in width is located between the application site and **any of the following:**

(A) Surface waters of the state.

(B) Any known private well.

(C) The surface opening or lowest point of any sinkhole. ~~or~~

(D) Any drainage inlet, including water and sediment control basins.

~~then the setback is the width of the filter strip.~~

(4) The setback is ten (10) feet if a gradient barrier is located between the application site and **any of the following:**

(A) Surface waters of the state.

(B) Any known well.

(C) The surface opening or lowest point of any sinkhole. ~~or~~

(D) Any drainage inlet, including water and sediment control basins.

(g) Manure, litter, or process wastewater must not be applied to the land from manure application equipment operating on a public road.

(h) Manure, litter, and process wastewater shall not be applied to saturated ground.

(i) When planning land application, the owner or operator must take into account the:

**(1)** weather forecast and ~~the~~ likelihood of precipitation events for the twenty-four (24) hour period ~~prior to~~ **before** and after the application; and

**(2)** site soil conditions;

to assure that manure, litter, and process wastewater are not applied ~~prior to~~ **before** a rain event that, when combined with soil conditions, would likely result in run-off.

(j) Manure, litter, and process wastewater must not be applied to highly erodible land unless **the:**

(1) ~~the~~ land is:

**(A)** pastureland; **or**

~~(2) the land is~~ **(B)** planted in a cover crop that reduces or controls erosion; or

~~(3) the~~ **(2)** manure, litter, or process wastewater is applied in accordance with the soil conservation practice plan required under section 11 of this rule.

(k) Land application sites must be inspected to identify any field tile outlets under or immediately bordering the land application site. Visual monitoring of identified field tile outlets must occur during and immediately following land application of the manure, litter, or process wastewater. If there is evidence of manure or process wastewater discharging from the field tile outlet, the land application must cease immediately and the flow stopped or captured. Any flow that is captured shall be either land applied or returned to storage.

(l) If a CAFO is land applying manure, litter, or process wastewater by injection or single pass incorporation, the CAFO must comply with the following setbacks:

(1) Public water supply wells and public water supply surface intake structures: five hundred (500) feet.

(2) Surface waters: twenty-five (25) feet.

(3) Sinkholes: twenty-five (25) feet.

(4) Wells: fifty (50) feet.

(5) Drainage inlets: five (5) feet. ~~and~~

(6) Property lines and public roads: zero (0) feet.

(m) If a CAFO is land applying solid manure or litter by surface application followed by incorporation within twelve (12) hours, the CAFO must comply with the following setbacks:

(1) Public water supply wells and public water supply surface intake structures: five hundred (500) feet.

(2) Surface waters: fifty (50) feet.

(3) Sinkholes: fifty (50) feet.

(4) Wells: fifty (50) feet.

(5) Drainage inlets: fifty (50) feet. ~~and~~

(6) Property lines and public roads: ten (10) feet.

*(Water Pollution Control Board; 327 IAC 15-15-12; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2239)*

### ***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on January 11, 2006, at 1:30 p.m.,*

*at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Water Pollution Control Board will hold a public hearing on amendments to rules for concentrated animal feeding operations at 327 IAC 5-4-3, 327 IAC 15-15-11, and 327 IAC 15-15-12.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*Indianapolis, Indiana 46204-2251*

*or call (317) 233-0855 or (317) 233-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana and are open for public inspection.*